

BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

MICHAEL J. MCFADDEN, M.D.)
Certificate # A-16526)

File No: 03-90-538

Respondent.)
_____)

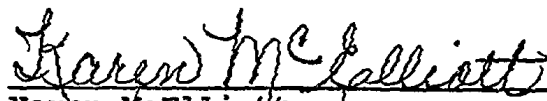
DECISION

The attached Stipulation is hereby adopted by the Division of Medical Quality of the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on November 4, 1994.

IT IS SO ORDERED October 5, 1994.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA


Karen McElliot
Division of Medical Quality

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ISA R. RODRIGUEZ
Deputy Attorney General
3 STATE BAR NO. 104838
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4 Oakland, CA 94612-3049
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5 Attorneys for Complainant
6
7

8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DIVISION OF MEDICAL QUALITY**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

No. D-5591

11 **MICHAEL J. MCFADDEN, M.D.**
12 4060 24th Street
San Francisco, CA 94116

STIPULATION AND WAIVER

13 Physician and Surgeon Certificate No. A-18526
14

15 Respondent.
16

17 **IT IS HEREBY STIPULATED** by and between the respondent
18 MICHAEL J. MCFADDEN, by and through his attorney, William J. Murphy, and the
19 Executive Director of the Medical Board of California, by and through its attorney, Isa
20 R. Rodriguez, Deputy Attorney General, as follows:

21 1. That Accusation No. D-5591 is presently pending against
22 respondent MICHAEL J. MCFADDEN, M.D., (hereinafter referred to as "respondent")
23 in the above-entitled matter.

24 2. That respondent was served by registered mail with the Accusation,
25 Statement to Respondent, and Notice of Defense in the above-entitled matter.

26 3. That respondent understands the nature of the charges alleged in
27 the above-mentioned pending Accusation as constituting possible grounds for

1 disciplinary action against his certificate.

2 4. That respondent is fully aware of his right to a hearing on the
3 charges and allegations contained in the above-mentioned pending accusation.

4 5. That respondent fully and voluntarily waives his right to a hearing
5 on the charges and allegations contained in the above-mentioned pending accusation
6 and that he further agrees to waive his right to reconsideration, judicial review, and any
7 and all other rights which may be accorded him by the Administrative Procedure Act
8 and the law of the State of California with regard to Accusation No. D-5591.

9 6. That it is acknowledged by the parties hereto that this Stipulation
10 constitutes an offer in settlement to the Medical Board of California (hereinafter
11 referred to as "Board") and is not effective until adoption by said agency.

12 7. That in the event this Stipulation is not adopted by the Board,
13 nothing herein recited shall be construed as a waiver of respondent's right to a hearing
14 or as an admission of the truth of any of the matters charged in the Accusation
15 (hereinafter attached as Exhibit A).

16 8. That all admissions of fact and conclusions of law contained in this
17 Stipulation are made exclusively for this proceeding and any further proceedings
18 between the Board and the respondent and shall not be deemed to be admissions for
19 any purpose in any other administrative, civil or criminal action, forum, or proceeding.

20 9. That respondent acknowledges that he negligently breached his
21 fiduciary duty and that the Board could establish with prima facie evidence that placing
22 H.P. in an apartment under the circumstances alleged constituted repeated negligent
23 acts and was, therefore, unprofessional conduct pursuant to Business and Professions
24 Code section 2234.

25 10. That respondent denies any allegations of incompetence, dishonesty,
26 or corruption and asserts that had this matter proceeded to hearing he would have
27 introduced rebuttal and mitigatory evidence as to the allegations but has chosen to

1 forego this right for purposes of these negotiations and in order
2 to avoid the time, expense, and uncertainty of trial.

3 11. That based on the foregoing recitals respondent
4 agrees that the Board has grounds for imposing discipline for
5 unprofessional conduct.

6 12. That, further, based on the foregoing recitals,
7 IT IS HEREBY STIPULATED AND AGREED that the Medical Board of
8 California may issue the following Order:

9 Certificate No. A 18526 heretofore issued to respondent
10 Michael J. McFadden, M.D., is hereby revoked; however,
11 said revocation is stayed and respondent is placed on
12 probation for five (5) years upon the following terms and
13 conditions.

14 I. SPECIAL CONDITIONS

15 A. Within 60 days of the effective date of this
16 decision, respondent shall submit to the Division of Medical
17 Quality for its prior approval a course in Ethics, which respondent
18 shall successfully complete, at his expense, during the first year
19 of probation.

20 B. Within 60 days of the effective date of his decision,
21 respondent shall submit to the Division of Medical Quality for its
22 prior approval a community service program in which respondent
23 shall provide free medical services on a regular basis to a
24 community or charitable facility or agency for at least 15 hours a
25 month for the first 18 months of probation.

26 C. Respondent shall reimburse the Board two thousand,
27 five hundred dollars (\$2,500.00) for the cost of investigation

1 resulting in the filing of this Accusation. Such payment shall be
2 made in six monthly installments by money order or cashier's check
3 made payable to the Medical Board of California and shall begin 30
4 days after the effective date of this decision.

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1 II. STANDARD CONDITIONS

2 A. Respondent shall obey all federal, state, and local laws, and all
3 rules governing the practice of medicine in California.

4 B. Respondent shall submit quarterly declarations under penalty of
5 perjury on forms provided by the Division, stating whether there has been compliance
6 with all the conditions of probation.

7 C. Respondent shall comply with the Division's probation surveillance
8 program.

9 D. Respondent shall appear in person for interviews with the
10 Division's medical consultant upon request at various intervals and with reasonable
11 notice.

12 E. The period of probation shall not run during the time respondent
13 is either not in practice or is residing or practicing outside the jurisdiction of California.
14 If, during probation, respondent moves out of the jurisdiction of California to reside or
15 practice elsewhere, respondent is required to immediately notify the Division in writing
16 of the date of departure, and the date of return, if any.

17 F. Upon successful completion of probation, respondent's certificate
18 will be fully restored.

19 G. If respondent violates probation in any respect, the Division, after
20 giving respondent notice and the opportunity to be heard, may revoke probation and
21 carry out the disciplinary order that was stayed. If an accusation or petition to revoke
22 probation is filed against respondent during probation, the Division shall have
23 continuing jurisdiction until the matter is final, and the period of probation shall be
24 extended until the matter is final.

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1 13. Respondent's decision to waive his right to a hearing and to waive
2 his right to reconsideration, judicial review, and all other rights accorded by the laws of
3 the State of California with regard to the above-entitled Accusation is made freely and
4 voluntarily and is not the result of coercion or undue influence by any persons or
5 parties.

6 Dated: 6/30/94

DANIEL E. LUNGREN, Attorney General of
the State of California

7
8 ISA R. RODRIGUEZ
9 Deputy Attorney General

10 Attorneys for Complainant

11
12
13 Dated: 6/30/94

14 WILLIAM J. MURPHY
Attorney for Respondent

15
16 I hereby certify that I have read this Stipulation and Waiver in its
17 entirety, that my attorney of record has fully explained the legal significance and
18 consequences thereof, that I fully understand all of same, and in witness thereof I affix
19 my signature.

20 Dated: 6/30/94

21 MICHAEL J. MCFADDEN, M.D.
Respondent
22 M.D.

23 a:\McFadden.S&W

EXHIBIT A

1 DANIEL E. LUNGREN, Attorney General
of the State of California
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8 BEFORE THE
DIVISION OF MEDICAL QUALITY
9 MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:) No. D-5591
11 MICHAEL J. McFADDEN, M.D.) ACCUSATION
4060 24th Street)
12 San Francisco, California 94116)
13 Physician and Surgeon Certificate No. A-18526)
14 Respondent.)

15
16 Petitioner, DIXON ARNETT, alleges as follows:

17 1. He is the Executive Director of the Medical Board of the State of
18 California (hereinafter the "Board") and makes and files this accusation solely in his
19 official capacity.

20 LICENSE HISTORY

21 2. The Board issued respondent, Michael J. McFadden, physician and
22 surgeon's certificate No. A-018526 authorizing him to practice medicine in the State of
23 California on May 12, 1959. That license expired on September 30, 1993 and is
24 currently delinquent. There is no record of prior disciplinary action against this license.

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STATUTES

3. Section 2001 of the Business and Professions Code^{1/} provides for the existence of the Board.

4. Section 2003 provides for the existence of the Division of Medical Quality ("the Division") within the Board.

5. Section 2004 provides, inter alia, that the Division is responsible for the administration and hearing of disciplinary actions involving enforcement of the Medical Practice Act (section 2000 et seq.) and the carrying out of disciplinary action appropriate to findings made by a medical quality review committee, the Division, or an administrative law judge with respect to the quality of medical practice carried out by physician and surgeon license holders.

6. Section 2018 authorizes the Division to adopt such regulations as may be necessary to enable it to carry into effect the provisions of law relating to the practice of medicine.

7. Sections 2220, 2234, and 2227 together provide that the Division shall take disciplinary action against the holder of a physician's and surgeon's certificate who is guilty of unprofessional conduct.

8. Section 2234 provides, in part, as follows:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts.

...

1. All statutory references are to the Business and Professions Code unless otherwise indicated.

1 (e) The commission of any act involving dishonesty or corruption which
2 is substantially related to the qualifications, functions, or duties of a physician and
surgeon."

3 9. Probate Code section 16004 provides, in pertinent part:

4 "A transaction between the trustee and a beneficiary which occurs
5 during the existence of the trust or while the trustee's influence with the
6 beneficiary remains and by which the trustee obtains an advantage from
the beneficiary is presumed to be a violation of the trustee's fiduciary
duties. This presumption is a presumption affecting the burden of proof."

7 **CODE OF ETHICS**

8 10. In 1980, the AMA adopted a 1980 revision of the AMA Principles of
9 Medical Ethics, which embodies basic principles of conduct by the profession.

10 11. Section 1 of the American Medical Association's Principles of Ethics
11 states as follows:

12 "I. A physician shall be dedicated to providing
13 competent medical service with compassion and respect for human
dignity."

14 12. Section 2 of the American Medical Association's Principles of Ethics
15 states as follows:

16 "II. A physician shall deal honestly with
17 patients and colleagues, and strive to expose those physicians deficient in
character or competence, or who engage in fraud or deception."

18 **HISTORY**

19 13. Patient H.P.^{2/}, born July 11, 1896, became a patient of Dr.
20 McFadden in 1979. Over the next several years, Dr. McFadden became increasingly
21 involved in managing this patient's financial affairs.

22 14. In July 1981, H.P.'s younger sister, H.H., who was then approximately
23 79 years old, opened two bank accounts in joint tenancy with her sister, H.P.. H.H.
24 deposited approximately \$45,000 into these two accounts. H.H.'s intent in putting
25 H.P.'s name on the accounts was to assure that her sister would receive the money in
26

27 2. Initials used to protect privacy interests. Names will be provided through normal discovery
procedures

1 the event of H.H.'s death without the necessity of a probate proceeding.

2 15. On March 2, 1984 H.P. executed a last will and testament which was
3 drawn up and witnessed by G.W., an attorney who shared law offices with Dr.
4 McFadden's attorney, W. J. M. In this will, H.P. made a series of specific bequests,
5 leaving \$1,000 to the Lakeshore Baptist Church in Oakland, a total of \$12,000 to
6 friends and neighbors, and \$10,000 to her sister, H.H.. H.P. left the entire residue of
7 her estate to Dr. McFadden, whom she also named as executor. The will specified
8 that if Dr. McFadden should predecease H.P., the residue of the estate should go to
9 Dr. McFadden's wife and children.

10 16. In January 1985, Dr. McFadden obtained Powers of Attorney from
11 both H.P. and H.H. for the two bank accounts established by H.H. in 1981.

12 17. On December 1, 1987, Dr. McFadden obtained a durable power of
13 attorney authorizing him to transact all business relating to a new savings account in
14 the name of H.P.. Two days later, all of the assets of one of H.H.'s two accounts,
15 approximately \$30,500, were transferred into this new account. H.H.'s name did not
16 appear on the new account as a joint tenant.

17 18. On January 4, 1988, Dr. McFadden closed H.H.'s remaining account,
18 transferring all of the assets, approximately \$15,000, into a new account in the name of
19 H.P. and Michael McFadden as joint tenants. On the same date, Dr. McFadden
20 transferred \$20,000 from the account he had opened in H.P.'s name in December 1987
21 into this new account.

22 19. When H.H.'s attorney discovered this state of affairs, he requested
23 that Dr. McFadden restore these monies to H.H.. Dr. McFadden was noncommittal in
24 his response and ultimately H.H. was obligated to file and prosecute a lawsuit in San
25 Francisco Superior Court to regain possession of the money in her accounts.

26 20. In May 1989, during the pendency of this lawsuit, Dr. McFadden told
27 court investigator Mary Joy Quinn that he believed H.H. intended to make a gift of the

1 monies in her bank accounts to her sister, H.P.. Dr. McFadden suggested that the
2 reason for this gift was that H.P. did not have much money and did not own a home.
3 In fact, H.P. did own her home on 25th Street in San Francisco and had lived there
4 until at least December 1987. Dr. McFadden had visited H.P. in this home on
5 numerous occasions.

6 21. After a trial in April 1990, the Honorable David A. Garcia of San
7 Francisco Superior Court concluded that Dr. McFadden had breached his fiduciary duty
8 to H.H. by transferring the money out of her bank accounts and entered a judgment
9 dated June 26, 1990, ordering that the monies in the accounts Dr. McFadden had
10 established in joint tenancy for himself and H.P. be transferred back into an account in
11 the names of H.H. and H.P., as joint tenants. The court also ordered that Dr.
12 McFadden pay H.H. costs of suit and costs of pursuit under Civil Code 3336.

13 22. In the meantime, on November 3, 1988, H.P. had executed a codicil
14 to her will. In this codicil she revoked all of the specific bequests in her 1984 will. In
15 the codicil, H.P. bequeathed only \$10,000 in trust to her sister, H.H., for use during her
16 lifetime. She left the remainder of her estate, including any unspent portion of the
17 \$10,000 trust upon H.H.'s death, to Dr. McFadden. Once again, this will was drafted
18 and witnessed by attorney G.W..

19 23. In March 1989, Dr. McFadden entered into a contractual
20 arrangement with A.G.. Under the terms of this arrangement, Dr. McFadden agreed
21 to permit A.G. to reside in an apartment he owned at 3931-3933 24th Street rent free.
22 In return, A.G. agreed to look after H.P..

23 24. Dr. McFadden moved H.P. into this apartment on April 2, 1989. By
24 this time, H.P. was bedridden and incontinent. Her mental state was impaired and she
25 appeared confused and forgetful. According to A.G., Dr. McFadden did not
26 adequately explain H.P.'s deteriorating condition or the scope of A.G.'s caretaking
27 responsibilities in advance. A.G. had no prior experience or training in caring for

1 bedbound elderly patients. She also had a job which required her to leave the
2 apartment from 4:30 to 9:30 p.m. each day. The apartment had no refrigerator, no
3 stove, and no kitchen sink. According to A.G. "everything was falling apart." The
4 apartment required painting and wallpapering, which A.G. did herself. When H.P. first
5 moved into the apartment, Dr. McFadden provided only a camp cot for her. Only
6 after A.G. complained did Dr. McFadden provide a hospital bed with an eggcrate foam
7 mattress. On occasion, A.G. would return home from work to find that H.P. had
8 covered herself and her surroundings with her own feces, yet Dr. McFadden provided
9 no laundry facilities for the apartment.

10 25. Alerted to this situation by the Board, the Public Guardian of the
11 City and County of San Francisco filed a petition for appointment of a conservator for
12 H.P. on or about April 14, 1989.

13 26. In April and May 1989, Mary Joy Quinn, a San Francisco Superior
14 Court Investigator interviewed H.P., A.G., Dr. McFadden and his attorney, and several
15 bank officers. On May 25, 1989, she submitted an investigative report to the Superior
16 Court. In her report, Ms. Quinn noted that Dr. McFadden intended to contest the
17 Public Guardian's petition and to seek appointment as conservator himself. While she
18 described A.G. as "alert" and "genuinely concerned about giving good care," Ms. Quinn
19 noted that A.G. lacked the training necessary to provide adequate care for a bedridden
20 elderly patient and that her job required her to be absent from the apartment on a
21 daily basis. In the final section of her report, Ms. Quinn questioned whether H.P. was
22 receiving appropriate personal and medical attention on a consistent basis in her
23 current placement and noted "this helpless woman is left alone frequently." The report
24 concluded that H.P. was in need of a conservator of person and estate. Ms. Quinn
25 also made the following recommendation:

26 "There is the possibility that H.P. may prefer to have her personal
27 physician serve as her conservator. However, serious questions have
arisen with regard to his involvement in her life and her financial affairs.

1 Her financial situation appears clouded; there is the possibility that
2 accounts may have been 'churned.' Moreover, serious questions exist as
3 to the appropriateness of any personal physician also serving as the legal
4 decision maker in addition to being a medical decision maker.

5 ...

6 Should the court decide to entertain the possibility of Dr.
7 McFadden serving as conservator, it is recommended that the Public
8 Guardian be named Temporary Conservator and be charged with
9 marshalling the assets."

10 27. After a hearing which Dr. McFadden attended with his attorney on
11 June 1, 1989, the petition of the Public Guardian was granted and the Public Guardian
12 was appointed H.P.'s conservator. Subsequently, the Public Guardian moved H.P. into
13 more suitable living quarters and retained A.G. as her paid attendant.

14 28. Dr. McFadden was uncooperative in turning over H.P.'s financial
15 assets to the Public Guardian after establishment of this conservatorship. Ultimately,
16 the Public Guardian was required to get a court order before Dr. McFadden would
17 cooperate.

18 29. In 1990, the Public Guardian proposed to sell H.P.'s house to meet
19 her ongoing financial needs. Dr. McFadden objected to this proposal and filed a
20 petition to remove the Public Guardian as conservator, alleging mismanagement of the
21 H.P.'s person and her estate.

22 30. As a result of Dr. McFadden's complaint, a second Court
23 Investigator, Jeanine Lim, conducted an investigation regarding H.P.'s condition in May
24 1990. Ms. Lim concluded that H.P. was receiving exemplary supervision and care from
25 A.G. and from the Carepoint Agency which provided skilled nursing assistance. Ms.
26 Lim expressed serious concern regarding Dr. McFadden's petition to be appointed
27 H.P.'s successor conservator. Her report stated that Dr. McFadden's proposals for
H.P.'s future care were vague and unrealistic and that his previous history of providing
inadequate care and of involvement in her financial affairs gave cause for concern.
The investigator also noted:

1 "Should Dr. McFadden decide to resume his former position as
2 H.P.'s doctor, questions arise as to the appropriateness of any personal
3 physician serving as legal decision maker in addition to being a medical
4 decision maker, as well as executor and primary beneficiary to the estate."

5 In the end, Dr. McFadden's petition was denied and the Public
6 Guardian's conservatorship of H.P.'s person and estate was affirmed.

7 31. In October 1990, Dr. McFadden filed a lawsuit against A.G. and the
8 Public Guardian complaining of assault, battery, negligence, negligent infliction of
9 emotional distress, and slander and seeking compensatory and punitive damages.

10 Essentially, the complaint alleged that A.G. had assaulted him during a visit to H.P. in
11 February 1990. This lawsuit is currently pending in Municipal Court in San Francisco.

12 32. H.P. died on February 11, 1992. Her sister, H.H., predeceased her.
13 As a result, Dr. McFadden became the sole beneficiary under H.P.'s will. On July 31,
14 1992 Dr. McFadden filed a petition for probate of her 1984 will and 1988 codicil. In
15 the petition, he estimated the value of the estate at \$200,000. A will contest has been
16 initiated by H.P.'s relatives and the case is currently in litigation.

17 FIRST CAUSE FOR DISCIPLINARY ACTION

18 33. The allegations of paragraphs 13 through 32 above are incorporated
19 by reference as though set forth in full here.

20 34. Dr. McFadden's excessive involvement in H.P.'s financial affairs
21 threatened the fiduciary nature of the doctor-patient relationship. Dr. McFadden's
22 conduct suggests that he was motivated more by considerations of personal enrichment
23 than by concern for the welfare of this patient. The financial and testamentary
24 transactions between Dr. McFadden and H.P. raise a presumption of breach of
25 fiduciary duty under Probate Code section 16004. In addition, the execution of a
26 codicil to H.P.'s will which benefitted Dr. McFadden in November 1988--approximately
27 five months before a court investigator found H.P. bedridden and unresponsive and

1 described her mental status as "impaired"--raises the inference of undue influence. The
2 American Medical Association's Principles of Ethical Conduct require physicians to
3 exercise foresight, diligence and tact. Dr. McFadden violated the standard of care
4 expected of physicians, which includes ethical considerations, by taking unfair advantage
5 of the vulnerabilities and generosity of an elderly patient for his own financial benefit.

6 35. Dr. McFadden further violated ethical considerations by opposing the
7 Public Guardian's reasonable efforts to improve his patient's personal welfare in an
8 attempt to preserve his potential bequest under her will. This conduct constitutes the
9 commission of an act involving dishonesty or corruption which is substantially related to
10 his functions or duties as a physician.

11 36. Respondent's conduct is in violation of section 2234(e) and applicable
12 medical-ethical standards and constitutes unprofessional conduct. Respondent used his
13 position as H.P.'s doctor to achieve the status of sole beneficiary under her will; he
14 attempted to enhance the potential value of the estate by wrongfully appropriating
15 monies belonging to his patient's sister; in an effort to preserve the assets of the estate
16 to his own benefit, he opposed reasonable efforts by the Public Guardian to obtain
17 better care for this patient and to expend the assets of the estate for her welfare.
18 Therefore, respondent has subjected Certificate No. A-018526 to disciplinary action
19 pursuant to section 2234.

20 SECOND CAUSE FOR DISCIPLINARY ACTION

21
22 37. The allegations of paragraphs 13 through 32 and the First Cause for
23 Disciplinary Action above are incorporated by reference as though set forth in full
24 here.

25 38. Dr. McFadden's conduct, particularly as alleged above in paragraphs
26 23 through 28, constitutes a violation of Business and Professions Code sections 2234(b)
27 and (c) in that, on April 2, 1989, he placed an elderly bedridden and incontinent

1 patient suffering from dementia and requiring 24-hour a day attendant care in a
2 situation where she was left unattended for several hours every day, where the
3 attendant provided for her was untrained, inexperienced, and unqualified to provide the
4 specialized care required by a patient in this condition, and where the facilities
5 provided were insufficient and inappropriate to provide adequately for this patient's
6 special needs. Dr. McFadden maintained the patient in this inappropriate situation for
7 several months and, during this period, resisted the petition of the Public Guardian to
8 be appointed his patient's conservator. Only after a court hearing in which the Public
9 Guardian was appointed the patient's conservator was the patient moved into a
10 situation with facilities and attendants appropriate to her medical condition and needs.

11 39. Dr. McFadden was grossly and repeatedly negligent in maintaining
12 his patient in this situation and in resisting the efforts of the Public Guardian to
13 ameliorate her conditions. In so doing, respondent has subjected his Certificate No. A-
14 018526 to disciplinary action pursuant to section 2234.

15 WHEREFORE, petitioner requests that the Division of Medical Quality
16 schedule a hearing in this matter and thereafter issue an order pursuant to sections
17 2234 suspending or revoking physician and surgeon certificate No. A018526 and taking
18 such other action as the Board deems proper.

19
20 DATED: Dec. 8, 1993

21
22 
23 DIXON ARNETT
24 Executive Director
25 Medical Board of California
26 State of California

27
Complainant